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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,441	11/20/2006	Dae Sung Choi	1628.1018	3052
21171 7590 11/03/2009 STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005				
EXAMINER				
STULIL, VERA				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
11/03/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/551,441

**Applicant(s)**

CHOI, DAE SUNG

**Examiner**

VERA STULII

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 02/17/2009; 02/09/2009; 01/16/2008; 10/05/2007; 07/05/2007; 04/12/2007; 01/12/2007; 12/05/2005; 09/29/2005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Republic of Korea on 04/08/2003 and 12/24/2003. It is noted, however, that applicant has not filed a certified copies of the 10-2003-0021930 and 10-2003-0096224 applications as required by 35 U.S.C. 119(b).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rendered indefinite for the recitation of the phrase "the main ingredient". The meaning of the "main" is not clear as to in what way the plant material is considered to be "main" (as a main source of flavor, main source of fermentable sugars, component in a greatest amount or some other interpretation).

Claims 1, 7, 9 and 13 are rendered indefinite for the recitation of the phrase "family Araliaelata". *Aralia Elata* is specie of genus *Aralia* of the family *Araliaceae*. Thus, *Aralia Elata* is a plant, not a family. Correction or clarification is required.

Claim 2 is rendered indefinite for the recitation of the phrase "an extract of *Rosa Davurica* and/or *Rhynchosia nolubilis* is added before fermentation". The term "*Rhynchosia nolubilis*" ("*Rhynchosia nolobilis*") in claims 2, 8 and 14 was not found in

the prior art. Instead, the term "Rhynchosia volubilis" was found in the prior art. Correction or clarification is required. Further in regard to claim 2, it is not clear to what substance the plant extract is being added.

Claims 3, 5, 9 and 11 recite the limitation "fermented solution" in step (A). However, step (A) is performed prior fermentation. Therefore, it not clear how the fermented solution is formed before the step of fermentation even begins.

Claims 4 and 10 recite filtering fermented solution in step (D). Claim 3 recites fermented solutions in steps (A), (B) and (C). It is not clear whether fermented solution in step (D) refers to the fermented solution in step (A), or step (B) or step (C).

Claims 6 and 12 are rendered indefinite for the recitation of the phrase "said crude fruit is used as it is, reduced to powder before use, used only in the flesh after removing the core of fruit and squeezed to utilize juice only". It is not clear in what form the fruit is used. Correction or clarification is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

**Claim 1 is rejected under 35 U.S.C. 102(a) as being anticipated by Oh (KR 1020020026900).**

In regard to claim 1, Oh discloses fermented wine made from fruit of deciduous shrub or latifoliate shrub in the family Araliaceae (Abstract).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 2, 8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oh (KR 1020020026900) in view of Chang et al (KR2002023520) and Avanes'jants et al (RU2,119,942).**

Oh does not disclose adding extract of *Rosa Davurica* or *Rhynchosia volubilis* before fermentation.

Chang et al discloses addition of *Rosa Davurica* extract to the beverage for its medicinal benefits (Abstract). It was well known in the art that extracts of flowers belonging to the genus *Rosa* of Rosaceae family have aromatic properties and are used as aromatic additives for the different products. Avanes'jants et al discloses addition of aromatic extracts to the wine/wort material prior to fermentation (Abstract). Addition of aromatic extracts to the wine/wort material prior to fermentation allows for the increase

of aroma in wines due to the presence of ferments in fermented wort (Abstract). Avanes'jants et al discloses addition of 0.2 to 20kg per 1000 dal (dekaliters) of unfermented wine material (page 4 col. 2 bottom paragraph). One of ordinary skill in the art would have been motivated to modify Oh and to add the extract of Rosa Davurica to the beverage as disclosed by Chang et al. One of ordinary skill in the art would have been motivated to do so in order to increase health and nutritional value of the beverage as disclosed by Chang et al. One of ordinary skill in the art would have been motivated to add the extract of Rosa Davurica to the wine/wort material prior to fermentation as disclosed by Avanes'jants et al in order to produce wine having increased pleasant aroma, and therefore to improve organoleptic properties of the final wine beverage. One of ordinary skill in the art would have been motivated to modify amount of plant concentrates depending on their aromatic and/or medicinal properties, concentration of the extracts, nutritional and organoleptic profile of the final wine beverage. One of ordinary skill in the art would have been motivated to include other plant materials, including Rhynchosia volubilis for its medicinal properties in order to further improve nutritional properties of the final wine beverage.

**Claims 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oh (KR 1020020026900) in view of Skripnikov (PRODUCTION OF FRUIT AND BERRY WINE AND JUICES).**

In regard to claim 3, Oh discloses obtaining a fruit juice, inoculating fruit juice with yeast and fermenting fruit juice to obtain fruit wine (Abstract). Oh is silent as to the additional method steps and parameters as recited. Skripnikov discloses production of

natural fruit and berry wines. In regard to claim 3, Skripnikov discloses addition of sugar to the fruit juice material depending on the desired alcohol content. For example, Skripnikov discloses that in order to produce fruit wine having alcohol content of 14% by volume, the sugar content in the wort/wine material prior to fermentation should be 27 g per 100 ml of wort (page 107), which is in the range as recited. Skripnikov further discloses fermenting the wine material by inoculating yeast at temperature of about 20°C (page 107). Skripnikov further discloses stopping the fermentation when 2g of sugar per 100 ml of wort remains (page 108). In regard to claim 4, Skripnikov discloses filtering of fermented wine and further step of maturation (page 109). In regard to claim 5, Skripnikov discloses alcoholic fermentation of wine from 14 to 17% (page 108). One of ordinary skill in the art would have been motivated to modify Oh in view of Skripnikov and to employ conventional steps of production of fruit wine. One of ordinary skill in the art would have been motivated to do so, since both references disclose production of fruit wine. One of ordinary skill in the art would have been motivated to add sugar to the wine material in order to obtain desired level of alcohol content in the wine beverage, conduct fermentation in optimal conditions, filter fermented beverage to achieve desired purity and to age beverage to form aroma, improve flavor and to further improve clarity of the fermented and filtered wine due to settling out of yeast, protein and other substances as taught by Skripnikov.

In regard to claim 6, Oh discloses fruit juice (Abstract).

In regard to claim 7, Oh discloses using Acanthopanax (Abstract). One of ordinary skill in the art would have been motivated to use any variety of Acanthopanax depending on availability, season, origin, personal preferences, etc.

**Claims 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oh (KR 1020020026900) in view of Skripnikov (PRODUCTION OF FRUIT AND BERRY WINE AND JUICES) as applied to claims 3-7 above, and further in view of Tsivinskij (RU 2,032,727).**

Oh and Skripnikov are taken as cited above. Oh and Skripnikov do not disclose drying fruit. Tsivinskij discloses production of fruit wine (Abstract). Tsivinskij also discloses that not only fresh fruit and berries could be used, but also frozen, canned or dried fruit may be used in the production of the fruit wine (page 4 col. 2 lines 20-24). Tsivinskij discloses that use of dried fruit for the production of fruit wine allows for the uniform production of wine throughout the whole year, regardless of fruit harvesting season.

Claims 9-13 are rejected for the same reasons as claims 3-7. Further in regard to claims 9-13, one of ordinary skill in the art would have been motivated to modify Oh in view of Skripnikov and further in view of Tsivinskij and to use dried fruit as a source of fruit in the production of fruit wine as disclosed by Tsivinskij. One of ordinary skill in the art would have been motivated to do so in order to achieve uniform production of wine throughout the whole year regardless of fruit harvesting season.



**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien Tran/  
Primary Examiner  
Art Unit 1794

/Vera Stulii/  
Examiner, Art Unit 1794